

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 14-0030 PJH

v.

**ORDER DENYING MOTION TO
REVOKE DETENTION ORDER**

MARCUS BELTON,

Defendant.

Defendant Marcus Belton has requested review of the Magistrate Judge's detention order and has moved for its revocation pursuant to 18 U.S.C. § 3145(b). The government filed an opposition to defendant's motion for revocation of the detention order. The court held a hearing on the motion for revocation of the detention order on May 21, 2014. For the reasons stated on the record and set forth below, defendant's motion to revoke the detention order is DENIED.

I. BACKGROUND

In an indictment filed on January 16, 2014, defendant Marcus Belton is charged with being a felon in possession of a firearm and a forfeiture allegation. On March 11, 2014, Magistrate Judge Ryu held a detention hearing and ordered that Belton be detained, as no condition or combination of conditions in 18 U.S.C. § 3142(c) will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. In the order detaining defendant pending trial, Judge Ryu noted Belton's prior revocations of community supervision and criminal history. Doc. no. 7. The court notes

1 that Pretrial Services was not able to interview with Belton's wife in advance of the
2 detention hearing, and has ordered Pretrial Services to conduct that interview.

3 Belton's criminal history includes convictions for controlled substance offenses in
4 2001, 2005 and 2007, and convictions for firearms offenses in 1991 (carrying a concealed
5 weapon) and 2007 (felon in possession). His state probation has been revoked five times
6 since 1991. On November 27, 2002, he admitted to six supervised release violations while
7 he was under supervision by U.S. Probation and was sentenced to 10 months custody.
8 While he was on release, pending a voluntary surrender date to serve his 10-month
9 sentence, Belton failed to show up for his voluntary surrender on January 3, 2003. *U.S. v.*
10 *Belton*, CR 98-40082 DLJ, doc. nos. 1429-32. Judge Jensen issued a bench warrant, and
11 Belton was subsequently arrested and prosecuted for failure to surrender for service of
12 sentence, resulting in a guilty plea. *Id.*, doc. nos. 1440, 1452, 1505, 1537.

13 At the time of his arrest on October 14, 2013, Belton was not on probation. Under
14 his original sentence, his supervised release was due to expire in March 2015, but his
15 supervision was terminated early in May 2013.

16 **II. LEGAL STANDARD**

17 **A. Standard of Review**

18 Under 18 U.S.C. § 3145(b), a criminal defendant is entitled to have a magistrate
19 judge's detention order reviewed by "the court having original jurisdiction over the offense."
20 The court reviews the Magistrate Judge's detention order de novo. *United States v.*
21 *Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990).

22 In conducting de novo review of the Magistrate Judge's detention order, "the district
23 court is not required to start over in every case, and proceed as if the magistrate's decision
24 and findings did not exist. . . . It should review the evidence before the magistrate and
25 make its own independent determination whether the magistrate's findings are correct, with
26 no deference." *Id.* at 1193. The district court may, but is not required to, hold an
27 evidentiary hearing. *Id.*

“Effective review of pretrial detention orders necessarily entails a speedy review in order to prevent unnecessary and lengthy periods of incarceration on the basis of an incorrect magistrate’s decision.” *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572 (9th Cir. 1987) (per curiam) (finding that 30-day delay in holding hearing to review detention order violated requirement under section 3142 for prompt review). A detention order must “include written findings of fact and a written statement of the reasons for the detention.” 18 U.S.C. § 3142(i)(1).

B. Pretrial Detention

Under the Bail Reform Act, an authorized judicial officer may order the detention or release of a defendant pending trial. 18 U.S.C. § 3142 governs pretrial detention of criminal defendants. Under the procedures set forth in the statute, criminal defendants are ordinarily entitled to go free before trial. *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985). In “rare circumstances,” however, a court may order a defendant detained pending trial. *Id.* These circumstances are limited to those in which a judge finds that “no condition or combination of conditions” will “reasonably assure” the appearance of the defendant at trial, and the safety of the community. 18 U.S.C. § 3142(e). The government bears the burden of proving by a preponderance of the evidence that the defendant poses a risk of flight, and of proving by clear and convincing evidence that no condition can reasonably assure that defendant will not present a danger to the community. *Motamedi*, 767 F.2d at 1406-07 (holding that the government failed to establish by a preponderance of the evidence that the defendant presented a serious risk of flight).

In determining whether either circumstance exists, the court is required to take into account the following:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

18 U.S.C. § 3142(g). The weight of the evidence against the defendant is the least important of these factors. *United States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986) (per curiam).

1. Risk of Flight

The court may detain a defendant if the government proves by a preponderance of the evidence that the defendant poses a risk of flight. *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991); *Motamedi*, 767 F.2d at 1407. The preponderance of evidence shows a risk of flight where, among other factors, the weight of the evidence is enough to alert the defendants to a "reasonable possibility of conviction." *United States v. Townsend*, 897 F.2d 989, 993-94 (9th Cir. 1990).

2. Danger to Community

The court may also detain a defendant if the government shows by clear and convincing evidence that no release condition will reasonably assure the safety of the community. Specifically, detention may be ordered where the court finds no condition or combination of conditions could prevent the defendant's continued or future criminal activity. *United States v. Salerno*, 481 U.S. 739 (1987). In assessing danger, physical

1 violence is not the only form of danger contemplated by the statute. See *United States v.*
2 *Reynolds*, 956 F.2d 192 (9th Cir. 1992). Danger to the community can be in the form of
3 continued narcotics activity. See *United States v. Miranda*, 442 F. Supp. 786, 792 (S.D.
4 Fla. 1977) ("Drug trafficking represents a serious threat to the general welfare of this
5 community."). Propensity to commit crime generally may constitute a sufficient risk of
6 danger to come within the act. See *United States v. Karmann*, 471 F. Supp. 1021, 1022
7 (C.D. Cal. 1979).

8 **III. DISCUSSION**

9 **A. Belton's Objections to Detention Order**

10 Belton has raised objections to the detention order on the grounds that his pretrial
11 detention violates his Eighth Amendment right against excessive fines and cruel and
12 unusual punishment and his due process rights. Pretrial detention based on risk of flight is
13 not prohibited by the Eighth Amendment. *United States v. Winsor*, 785 F.2d 755, 756 (9th
14 Cir. 1986). Nor does pretrial detention based on risk of flight impose punishment without
15 adjudication of guilt, in violation of the due process clause of the Fifth Amendment. *Id.*

16 **B. Grounds for Pretrial Detention**

17 The government contends that it has demonstrated both flight risk and danger to
18 community, although both circumstances are not required to warrant detention. Weighing
19 the § 3142(g) factors on the current record, the court determines that the government has
20 demonstrated by a preponderance of the evidence that Belton presents a flight risk, such
21 that no condition or combination of conditions will reasonably assure the appearance of the
22 defendant at trial. 18 U.S.C. § 3142(e). The government has not, however, shown by clear
23 and convincing evidence that no release condition will reasonably assure the safety of the
24 community.

25 First, the nature and circumstances of the charged offense, possession of a firearm
26 by a felon, are serious and weigh in favor of pretrial detention. Belton faces a maximum 10
27 years imprisonment and 3 years supervised release. When Belton was arrested, he was
28 carrying a loaded pistol in his waistband, cash and a bag of marijuana on his person. In his

1 car was additional ammunition, individually packaged drugs and paraphernalia. Although
2 Belton is not charged with a drug offense, the government argues that the contraband
3 found on his person and in his car support probable cause that he was engaged in
4 distribution, such that a rebuttable presumption that he is both a flight risk and danger to
5 the community is warranted pursuant to section 3142(e). The government does not cite
6 authority that the presumption applies where the defendant was not charged with drug
7 distribution, and the court declines to apply the presumption here. *See United States v.*
8 *Salerno*, 481 U.S. 739, 750 (1987) (“The Act operates only on individuals **who have been**
9 **arrested** for a specific category of extremely serious offenses.”) (citing 18 U.S.C. § 3142(f))
10 (emphasis added). *See also United States v. Gentry*, 455 F. Supp. 2d 1018, 1029 (D. Ariz.
11 2006) (where the defendant was not charged with either a crime of violence, as defined by
12 18 U.S.C. § 3156, nor allegations of drug distribution or the use or distribution of illegal
13 weapons offenses, no rebuttable presumption of detention arises pursuant to 18 U.S.C.
14 § 3142(e)(1)(2)).

15 Second, the weight of the evidence against Belton is strong, given that he was
16 arrested with a loaded firearm within reach in his waistband. In addition to the drugs found
17 in Belton’s car and on his person, a magazine of ammunition for the pistol was found in his
18 car. The fact that Belton has not also been charged with drug trafficking does not weigh
19 against the strength of the evidence to support the felon in possession charge.

20 Third, Belton’s history and characteristics show that he poses a serious risk of flight,
21 although he was not on probationary status at the time of his arrest. Belton contends that
22 he is not a flight risk on the grounds that he posted \$230,000 bail in the state court criminal
23 proceedings, based on the same conduct underlying the federal indictment for felon in
24 possession of a firearm, and that he was released from custody subject to wearing an
25 ankle monitor. Belton also indicates that his mother has put her car title up for collateral,
26 and proffers that family members are willing to post unsecured bonds for his pretrial
27 release. Belton’s criminal history demonstrates, however, that his state probation has been
28 revoked several times, as recently as 2007, and that several bench warrants were issued

1 by the state court. In matters before this court, defendant admitted to six supervised
2 release violations in 2002, but failed to self-surrender, resulting the court's issuance of a no
3 bail warrant for his arrest in January 2003.

4 Fourth, with respect to the nature and seriousness of danger posed by pretrial
5 release, the government contends that Belton's release poses danger to the community,
6 given his recidivism and ongoing participation in drug trafficking and carrying firearms,
7 despite numerous felony convictions. The government asks the court to consider that the
8 risk of violence commonly associated with drug trafficking, which Belton has demonstrated
9 here by carrying a firearm and possessing ammunition, pose further danger to the
10 community, which would not be alleviated by an ankle monitor or an unsecured bond
11 signed by a family member. The current record reflects concerns about some risk of
12 danger to the community, but this record does not rise to the level of clear and convincing
13 evidence of danger to any person or the community such that no condition of release will
14 reasonably assure the safety of the community.

15 Having considered Belton's criminal history, including firearms offenses which
16 qualify him as a career offender, his failure to self-surrender, issuance of bench warrants
17 and his prior probation revocations, the weight of the evidence against Belton, and the
18 seriousness of the federal charges he is now facing, the court finds that the government
19 has shown by a preponderance of the evidence that Belton presents a significant risk of
20 nonappearance, despite the ankle monitor and willingness of his family to sign an
21 unsecured bond. The court finds that the government has not demonstrated by clear and
22 convincing evidence that Belton presents a danger to the community.

23 **IV. CONCLUSION**

24 In light of the seriousness of the pending charges, the weight of the evidence, and
25 Belton's criminal history, the government has demonstrated by a preponderance of
26 evidence that no condition or set of conditions will reasonably assure Belton's appearance
27 at trial if he were released. Belton's motion to revoke the detention order is therefore
28 DENIED.

1 Accordingly, IT IS ORDERED that defendant shall remain in the custody of the
2 Attorney General or a designated representative for confinement in a corrections facility
3 separate, to the extent practicable, from persons awaiting or serving sentences or being
4 held in custody pending appeal; defendant must be afforded reasonable opportunity for
5 private consultation with counsel; and on order of a court of the United States or on request
6 of an attorney for the Government, the person in charge of the corrections facility in which
7 defendant is confined must deliver defendant to a United States marshal for the purpose of
8 an appearance in connection with a court proceeding.

9 **IT IS SO ORDERED.**

10
11 Dated: May 23, 2014



PHYLLIS J. HAMILTON
United States District Judge